

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF MINNEAPOLIS

In the Matter of the Revocation of
the Taxicab License of Ghani Habib

License ID. Number 4537

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick on January 31, 2000, at 9:30 a.m. at the Office of Administrative Hearings, in Minneapolis and on April 25, 2000 in the Minneapolis City Attorney Conference Room in Minneapolis. Henry T. Reimer, Assistant City Attorney, 333 South Seventh Street, Suite 300, Minneapolis, Minnesota 55402-2138, appeared on behalf of the City of Minneapolis ("the City"). Thomas Brudvig, 520 Marquette Avenue South, Suite 900, Minneapolis, Minnesota 55402, appeared on behalf of the Licensee, Ghani Habib. The record in this matter closed on May 16, 2000, upon the receipt of the final posthearing brief.

NOTICE

This Report contains a recommendation and not a final decision. The final decision will be made by the Minneapolis City Council, which may affirm, reject, or modify the Findings and Conclusions contained herein. The Council will consider the evidence in this case and the hearing examiner's recommended Findings of Fact and Conclusions, but will not consider any factual testimony not previously submitted to and considered by the Administrative Law Judge. The Licensee will have an opportunity to present oral or written arguments alleging error on the part of the Administrative Law Judge in the application of the law or interpretation of the facts and may present argument related to the recommendation. The Council's decision as to what, if any, adverse action shall be taken will be by resolution under Chapter 4, Section 17 of the Minneapolis City Charter. To ascertain when the Council will consider this matter, the parties should contact the City Clerk, Council Information Division, 350 South Fifth Street, Room 304, Minneapolis Minnesota 55415-1382, telephone number (612) 673-3136.

STATEMENT OF ISSUE

The issue presented in this matter is whether it has been proven that Ghani Habib violated the standards required of licensed cab drivers and if so, whether adverse action should be taken against his taxicab license.

Based on all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Ghani Habib worked for Yellow Cab as a driver and held taxicab license number 4537. That license was issued on February 2, 1999.

2. On February 23, 1999, Officer Christie Nelson of the Minneapolis Police Department was working undercover on a prostitution operation. Mr. Habib approached Officer Nelson in a car and waved her over to the car. Officer Nelson asked if he was interested in a date and indicated three different sex acts with a price for each.^[1] Habib indicated that he wanted a date and he had \$25.00.^[2] He was then arrested and cited for misdemeanor prostitution.^[3]

3. On the evening of July 4, 1999, Mr. Habib was driving a Yellow cab in and around Minneapolis.

4. Candace Dionne contacted the Brooklyn Center Police Department on July 4, 1999 and complained of an assault by a cab driver earlier that evening. She had been driven to Brooklyn Center from 28th and Cedar in Minneapolis by Mr. Habib in his cab. There was physical contact between Mr. Habib and Ms. Dionne that she did not consent to. Mr. Habib took Ms. Dionne's purse and kept it from her for some minutes to keep her in his cab. As soon as she got home, Dionne told her mother about the incident and called the Brooklyn Center Police Department to report the conduct. Dionne gave a general description of the driver to the police.

5. What Dionne told the Brooklyn Center police officers^[4] was that she had been waiting for a bus at 28th and Cedar Avenue in Minneapolis. A couple at the bus stop hailed a Yellow cab driven by Mr. Habib. Dionne was invited to share the cab. She indicated that she only had one dollar and that Mr. Habib indicated that was not a problem. Dionne sat in the front seat and the couple sat in back. The couple was dropped off at 28th and Lyndale Avenue. While driving to Dionne's requested address in Brooklyn Center, Habib directed the conversation to sexual matters. Dionne became uncomfortable and told him that she was pregnant and had a boyfriend. Dionne directed that Habib drop her off in a parking lot about a block away from her residence. Upon arriving at the parking lot, Habib offered Dionne varying amounts of money for different sexual activity. He then began to unbutton her pants and attempted to touch her genitals. He also touched her breasts through her shirt. Dionne got her purse back from Habib and left the vehicle. Habib gave Dionne a few dollars, which she threw away.

6. After receiving Dionne's report, Detective Nadeau and the City's Cab Inspector, Michael Rumppe, went to Yellow Cab to investigate further. Yellow Cab had no trip sheet identifying any fare matching the trip to Brooklyn Center. Yellow Cab could produce no trip sheets created by Mr. Habib. Yellow Cab provided the names of all the 71 cab drivers at work for Yellow Cab on July 4, 1999. Rumppe collected photographs of all 71 of those drivers from his files. Detective Nadeau excluded the photographs of those drivers whose general physical characteristics did not meet those described by Ms.

Dionne. The remaining 35 photographs were shown to Ms. Dionne. One of those photographs was of Mr. Habib and she identified the person in that photograph as the person who assaulted her.

7. Detective Nadeau then contacted Yellow Cab and obtained a computer printout of the activities of Habib's cab on July 4, 1999. That information showed the meter in Habib's cab being turned on and off for several fares in the hours before and after the incident with Ms. Dionne. There were no fares indicated during the time that Ms. Dionne was in Habib's cab.

8. On July 14, 1999, Detective Nadeau telephoned Mr. Habib. Habib indicated that he did not recall driving to Brooklyn Center on July 4, 1999. He did agree to come in later that day for an interview. In the interview, Habib said that he remembered the young woman that he drove to Brooklyn Center and he identified the same pick-up and drop-off locations as Ms. Dionne. Habib denied that Ms. Dionne had told him she only had one dollar and denied that a Hispanic couple had hailed his cab. In the interview, Habib claimed that Ms. Dionne attempted to leave his cab without paying. In response to that conduct, Habib told Detective Nadeau that, "so I grab her when she was running, I promise, that's all, I grab her and I said 'Pay me money', she said she doesn't have money."^[5] Mr. Habib also indicated that he took Ms. Dionne's purse to check if she had any money.^[6]

9. Mr. Habib indicated that he ran the meter during the trip to Brooklyn Center.^[7] Detective Nadeau pointed out that there was no record of any fare from Mr. Habib's cab to Brooklyn Center on that date. Habib responded that "My cab has a secret ... something in the car that either didn't show up when that thing is off, doesn't show up on the meter."^[8] Habib acknowledged that he did not fill out trip sheets for the last couple of months.^[9]

10. Mr. Rumppe described the system used by Yellow Cab to track its cabs. Each meter communicates with the Yellow Cab computer when the meter is engaged to measure a trip fare. The meter sends another communication when the meter is stopped for charging the passenger. The connection between the meter and communications device is through a cable linking at the back of the meter. The driver can disconnect the cable without impairing the meter's functioning.

11. On January 21, 2000, the City issued a Notice of Hearing to Mr. Habib on the basis of the July 4, 1999 incident and the evidence derived from the subsequent investigation. The Notice of Hearing set this matter on for hearing on January 31, 2000.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minneapolis City Council and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.55 and MCO § 341.440. The

Notice of Hearing issued by the City was proper and all applicable substantive procedural requirements have been fulfilled.

2. The City bears the burden in this matter of proving by a preponderance of the evidence that adverse action is warranted with respect to the taxicab license at issue.

3. MCO § 341.440 authorizes the Minneapolis City Council to revoke, suspend, or not renew a taxicab driver's license "at any time for cause after a hearing before the committee."

4. MCO § 341.240 requires taxicab drivers to complete trip sheets recording each fare carried.

5. MCO § 341.250 states in pertinent part:

No taxicab driver shall:

* * *

(c) Threaten, abuse, insult, provoke, interfere with, impede or obstruct any other licensed driver, any passenger, prospective passenger or any other person in connection with operations under this chapter;

* * *

(h) Knowingly and with intent to disrupt communication on a two-way radio system, manipulate a microphone switch or other jamming device;

* * *

(k) Fail to engage the taximeter when the taxicab is in motion and a passenger is present, unless a method of computing the fare without use of the meter is expressly authorized by a provision of this chapter

(l) Solicit passengers in the City of Minneapolis, or lay hands upon the person or baggage of any person without the express consent of that person, or obstruct the movement of any persons, or follow any person for the purpose of soliciting business. Display of a sign on the taxicab to indicate that it is not engaged shall not be considered solicitation;

* * *

(u) Engage in, or permit the use of a taxicab for, illegal gambling, prostitution, or trafficking in alcoholic beverages or controlled substances

* * * *

6. The City has demonstrated that Mr. Habib violated MCO § 341.250(c), (h), and (l), and MCO § 341.240.

7. The evidence presented is insufficient to demonstrate that Mr. Habib violated MCO § 341.250(u).

8. The Minneapolis City Charter, Chapter 4, Section 16 states:

Section 16. Licenses May Be Revoked. Any license issued by authority of the City Council may be revoked by the City Council at any time upon proper notice and hearing for good cause; and upon conviction before any court of any person holding such a license for a violation of the provisions of any law, ordinance or regulation relating to the exercise of any right granted by such license, the city council may revoke such license in addition to the penalties provided by law or by ordinance for any such violation.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED: that the Minneapolis City Council take adverse action against the taxicab license of Ghani Habib.

Dated this 9th day of June, 2000.

/s/ Steve M. Mihalchick by G.A.B.
STEVE M. MIHALCHICK
Administrative Law Judge

NOTICE

The City is respectfully requested to provide a copy of its final decision to the Administrative Law Judge by first class mail.

Reported: Tape recorded (two tapes).

MEMORANDUM

The City relies upon the broad admissibility of evidence to include Ms. Dionne's unsigned statement to police officers in the record of this matter. That statement does not, by itself, support taking adverse action against Mr. Habib for violations of the standards of cab drivers, since Ms. Dionne was not available to testify or be subject to cross-examination. She was subpoenaed by the City, but refused to appear. This behavior undermines the credibility of her statement to the police.

Ms. Dionne's statements are sufficient to support taking adverse action, however, when corroborated by Mr. Habib's statements to the police officers investigating the incident.^[10] Initially, Mr. Habib claimed he did not recall the incident and was not in

Brooklyn Center on July 4, 1999. Upon learning the seriousness of his situation, however, his memory improved and he related his version of the incident in great detail. Mr. Habib's version of events was clearly tailored to avoid the filing of criminal charges, and this undermines the credibility of parts of his statement.^[11]

Mr. Habib's statement to the police acknowledged grabbing his passenger, seizing her purse, and examining the contents of her purse. There is no evidence that consent was obtained for any of this conduct. This conduct violates MCO § 341.250(c) and (l).

Both Ms. Dionne and Mr. Habib indicated that the meter was engaged during the trip. Therefore, his conduct does not violate MCO § 341.250(k), prohibiting drivers from carrying a passenger without engaging the meter. But Mr. Habib indicated to Detective Nadeau that he had disconnected the meter from the communications device in his cab. Habib's description of how that disconnection was accomplished demonstrated that he knew what he was doing and intended to disrupt communications with Yellow Cab. This conduct violates MCO § 341.250(h).

The City alleged that Mr. Habib violated MCO § 341.250(u) by offering Ms. Dionne money if she would engage in sexual conduct with him.^[12] The City presented no witnesses to prove this allegation. Mr. Habib expressly denied this conduct in his statement to police. The standard for taking adverse action against licenses requires that the seriousness of depriving persons of their livelihood be considered when weighing the evidence in a licensing matter.^[13] The record contains insufficient evidence to conclude that Habib's conduct violated MCO § 341.250(u).

Trip sheets are required of all cab drivers under MCO 341.240. Each trip sheet must identify every fare accepted and specify the date, time, and location of a request for service, the destination, and the cost of the fare. Cab drivers are made aware of the trip sheet requirement in the "Cab College" training that must be completed prior to licensure.^[14] Mr. Habib acknowledged not filling out trip sheets in his statement to police. When asked, Yellow Cab could not find any trip sheets completed by Mr. Habib. Habib's failure to complete trip sheets constitutes a violation of MCO § 341.240.

In its Notice of Hearing, the City alleged violations of MCO §§ 341.100 and 341.120, which requires taxicab drivers to be courteous to the public and to operate cabs in accordance with the laws of the State and City, and with due regard for the safety, convenience, and comfort of passengers and the public. There was no expert testimony introduced to show what standards must be met by taxicab drivers under these ordinances. Mr. Habib's improper conduct is covered under the more specific prohibitions of MCO § 341.250.

The Administrative Law Judge concludes that the City's evidence is sufficient to support taking adverse action against Mr. Habib's taxicab license for violations of MCO § 341.240 by failing to maintain trip sheets; MCO § 341.250(c) and (l) by way of his conduct toward his passenger, and MCO § 341.250(h) by intentionally disrupting communications between his meter and Yellow Cab. These violations support the imposition of sanctions

against Mr. Habib's taxicab driver's license. The Administrative Law Judge recommends that adverse action be taken against the taxicab license held by Mr. Habib.

S.M.M.

^[1] Exhibit 1, at 00018.

^[2] *Id.*

^[3] There is no evidence in the record of this matter that the charge was prosecuted further.

^[4] This finding is taken from the transcript of the police interview of Ms. Dionne, contained in the record as Exhibit 2.

^[5] Exhibit 1, at 00027.

^[6] *Id.*

^[7] Exhibit 1, at 00031.

^[8] *Id.*

^[9] Exhibit 1, at 00040.

^[10] While Ms. Dionne was not available to testify, Mr. Habib was present during the hearing of this matter and declined to testify. There is no due process impediment to using Mr. Habib's statements to police in deciding this matter.

^[11] Mr. Habib was present for the hearing of this matter, but he did not testify.

^[12] The City also presented extensive evidence of Mr. Habib's arrest on the charge of soliciting prostitution from an incident occurring on February 23, 1999. He was not operating a cab at the time of the incident and there has been no showing that the incident relates to his taxi driver's license. The City argues that the similarity of the conduct on the February 23 incident and July 4 allegations support a finding that soliciting prostitution occurred on July 4. The evidence is too tenuous to support that conclusion. The undercover officer was clearly acting as a prostitute would in order to attract business and thereby be able to arrest would-be customers. There was no such conduct on July 4, 1999. Habib's conduct on February 23, 1999 does indicate that he is willing to engage in sexual activity with strangers, contrary to his assertions in his later statement to the police.

^[13] *In Re Wang*, 441 N.W.2d 448, 492 (Minn. 1989).

^[14] Cab drivers are also taught in Cab College that they cannot use force to compel a person to pay a fare and they cannot seize a passenger's baggage to compel payment.